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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Letter adressed by the Chairperson of the Committee on Economic, Social and Cultural Rights to Mr. Wally N'Dow, Assistant Secretary-General, United Nations Centre for Human Settlements (HABITAT)

GE.95-18387

Dear Mr. N'Dow,

1. I am writing to you in my capacity as Chairperson of the United Nations Committee on Economic, Social and Cultural Rights in relation to Resolution 15/2 (entitled "Report on housing rights strategy") adopted by the Commission on Human Settlements on 1 May 1995. The resolution requests the Executive Director to undertake, in consultation with other relevant United Nations bodies, a review of the Housing Rights Strategy report (HS/C/15/2/Add.2) with a view to taking into account, inter alia, concerns expressed by some Member States "regarding the existence and/or legal status of the right to adequate housing".

2. On the basis of detailed reports that I have received I understand that at least one delegation argued, in very strong terms, in favour of the proposition that there is no such human right as a right to adequate housing, that this right is not recognized in international human rights law and that the right has never been recognized in international treaties. The delegation indicated that it attached great importance to this issue, that it would call for a vote upon any paragraph referring to the right to housing and that it would vote against the inclusion of any such reference.

3. I do not wish to become engaged in the policy debate which is clearly a matter for those States participating in the work of the Commission. However, as Chairperson of the United Nations Committee which is charged with monitoring compliance with the International Covenant on Economic, Social and Cultural Rights, it is incumbent upon me to seek to clarify the legal doubts that have been expressed in relation to the right to housing.

4. The right to housing was first recognised in the Universal Declaration of Human Rights which has always been regarded as the foundation stone upon which the international human rights system is based. Article 25 of the Universal Declaration states that:

> "Everyone has the right to a standard of living adequate for the health and well-being of himself [sic] and his family, including ... housing ...".

5. This formulation actually derives to a very significant extent from a draft placed before the United Nations in 1946 by a singularly authoritative and distinguished body of United States legal scholars and practitioners known as the American Law Institute (ALI). The ALI's "Statement of Essential Rights" made express provision for "the right to adequate food and housing". The statement was, in turn, inspired by U.S. President Roosevelt's State of the Union Address in 1944 when he defended "the right of every family to a decent home".

6. The right was subsequently reflected in article 11(1) of the International Covenant on Economic, Social and Cultural Rights, which provides that:

> 1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing. ...

7. During debates and discussions in Nairobi, especially in the context of the Habitat Preparatory Committee meetings, several different arguments were apparently advanced to support the proposition that no right to adequate housing has ever been recognized in international law, despite the clear wording of these provisions.

8. The first argument was to the effect that these provisions recognize only "a right to an adequate standard of living" but not a right to housing. This argument is simply not tenable. In the first place, the United Nations Commission on Human Rights as well as the General Assembly and a host of other

bodies have regularly referred to the right to housing in documents, legal instruments and other texts between 1948 and today. The suggestion that there is no right to housing has never before been asserted. Indeed, not a single report submitted by any of the 131 States parties to the Covenant on Economic, Social and Cultural Rights has ever challenged, let alone denied, that there is a separate and distinct right to adequate housing recognized in the Covenant. It is very strange for this matter to have been raised for the first time after well over 40 years of debate in which no such challenge has ever been made.

9. Secondly, if there is no right to housing based on these instruments then there is, equally, neither a right to adequate food, nor a right to clothing. It is difficult to accept that this could possibly be the case given that the resulting situation would directly contradict innumerable resolutions adopted by every United Nations body from the General Assembly and the Economic and Social Council to the Commission on Human Rights and many others.

10. Thirdly, as a matter of logic, the right to an adequate standard of living, the existence of which the argument seems to acknowledge, is clearly composed of several elements. One of these is housing. If there is a right to the overall package, there is clearly a right also to the component parts, and thus also a right to housing.

11. Fourthly, this argument would also apply in relation to many of the central provisions of the Covenant on Civil and Political Rights. Suffice it to note that there is no reference to a "right to be free from torture" but merely a statement that "No one shall be subjected to torture ...". It is thus apparent that the argument put forward in Nairobi in relation to the right to housing is thus without any logical or legal foundation.

12. The second argument used by those disputing the existence of a right to housing was that it is not part of customary law. While this proposition is debateable, its acceptance means neither more nor less than that housing is on a par with a wide range of other human rights which many international law experts would not yet characterize as being part of customary law. They include: the right to freedom of association, the right to democracy (as it is commonly termed), freedom of religion, privacy, due process rights, and various worker's rights including the prohibition of exploitative child labor etc. The list of non-customary rights is a very long one, if we accept for example the approach reflected in the ALI's *Third Restatement of the Foreign Relations Law of the United States* (§702). But this argument has never been raised by the State(s) which challenge the right to housing when they themselves have sought to insist on the need for other States to respect these human rights, even though they might not be bound by relevant treaty obligations or by traditional interpretations of customary law. There is therefore no basis in law, policy or practice for the suggestion that the absence of a right from the list of customary norms is sufficient reason for any reference to that norm to be excluded from United Nations documents.

13. A third argument used was to the effect that the domestic law of certain states has never recognized a right to housing. This may well be the case but there are two important qualifications to be noted. The first is that the International Convention on the Elimination of All Forms of Racial Discrimination, to which the great majority of States are a party, refers explicitly to "the right to housing". While this only applies to an obligation not to discriminate in relation to that right, it constitutes an unequivocal recognition of the right, per se. Secondly, the fact that municipal law in one or more States does not recognize a given right as a human right for the purposes of domestic law is no reason to oppose any reference to it in an international document.

14. The final argument apparently put forward was that a right to housing would be incompatible with the "enablement" approach reflected in the U.N.'s Global Stategy for Shelter to the Year 2000. This argument could only be

plausible if the right to housing is radically misinterpreted so as to equate it with an obligation upon a government to actually provide every individual with housing. Such a proposition could only be advanced from the vantage point of great ignorance of the international human rights framework and of the views consistently expressed by the United Nations Committee on Economic, Social and Cultural Rights.

15. In assessing the arguments put forward against the existence of a right to adequate housing it is necessary also to bear in mind the implications of such a position for the overall development of international law in the human rights field. Many States have responded in an appropriately firm and uncompromising manner to suggestions by a few observers that some of the rights contained in the Universal Declaration of Human Rights and in the International Bill of Rights are not "really" human rights. These assaults on the principle of universality have correctly been rebuffed and the Vienna Declaration adopted by the World Conference on Human Rights was clear and unequivocal in its affirmation of the principles involved. It is extraordinary, however, that those who challenge the existence of a right to housing seem to be engaging in precisely such an assault, albeit in relation to a different human right. The implications of denying the existence of one of the long-recognized human rights is a strategy fraught with danger and one which cannot help but undermine the international legal regime. It is one thing for a given State to insist that it does not recognize for itself an obligation to promote the right to housing (except perhaps for the non-discrimination element dealt with in the Convention on the Elimination of All Forms of Racial Discrimination). That insistence is legitimate, even if some would question its appropriateness. It is, however, an entirely different matter to deny the existence of one of the internationally recognized human rights and to oppose all reference to it, even in a non-binding, recommendation by an international conference.

16. For these reasons I believe that the Commission on Human Settlements should unequivocally reject any suggestion that the right to adequate housing is not a human right. I would also add that the Committee on Economic, Social and Cultural Rights has recently noted (E/1995/L.21 para 10) that it is essential to ensure "that the general policy framework for the [Habitat II] Conference takes full account of the importance" of the right to adequate housing. While it has occasionally been suggested that such matters should only be dealt with by the Commission on Human Rights and not by bodies such as the Commission on Human Settlements, this is directly contrary to widely accepted views that human rights cannot be quarantined and confined to a very small segment of the overall debate. Neither the Commission on Human Rights, nor the Committee on Economic, Social and Cultural Rights, have any significant operational role or capacity, nor do they have any direct inputs into discussions on housing policy. It is therefore indispensable that this matter should be addressed by the Commission on Human Settlements and by Habitat to the fullest appropriate extent.

17. I would be grateful if you could make this letter available to the next Prep Comm and to any other pertinent meetings.

Yours sincerely,

Philip Alston,

Chairperson, United Nations Committee on

Economic, Social and Cultural Rights